



**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

Office of the Inspector General, Petitioner

vs.

██████████ Respondent

DECISION

Case #: FOF - 170641

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Pursuant to petition filed December 7, 2015, under Wis. Admin. Code §HA 3.03, and 7 C.F.R. § 273.16, to review a decision by the Office of the Inspector General to disqualify ██████████ ██████████ from receiving FoodShare benefits for ten years, a telephonic hearing was held on Tuesday, January 19, 2016 at 02:30 PM.

The issue for determination is whether the Respondent committed an Intentional Program Violation (IPV).

There appeared at that time the following persons:

**PARTIES IN INTEREST:**

Petitioner:

Representative: ██████████

Office of the Inspector General  
Department of Health Services - OIG  
PO Box 309  
Madison, WI 53701

Respondent:

██████████  
██████████  
██████████

█

**ADMINISTRATIVE LAW JUDGE:**

Mayumi Ishii  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. On February 17, 2016, the Office of Inspector General (OIG) prepared an Administrative Disqualification Hearing Notice alleging that the Respondent, "provided false information in order to receive SNAP/FoodShare that she was not eligible for..." during the periods of:

October 1, 2013 to February 28, 2014

April 9, 2014 to June 30, 2014, and

March 2, 2015 to August 31, 2015

Though there was no specific information in the notice regarding the receipt of dual benefits under the heading, "Summary of Violation and Evidence", OIG sought to impose a ten year disqualification. (Exhibit 14)

2. On March 9, 2013, the Respondent completed an on-line ACCESS renewal, indicating that she was homeless, but living at the [REDACTED] [REDACTED]. The Respondent indicated that she was a resident of Wisconsin. The renewal contained a penalty warning advising the Respondent of the consequences of providing false information, including disqualification from the FoodShare program for ten years. The Respondent electronically signed the application, indicating that she understood the penalties for giving false information or breaking the rules. (Exhibit 1, pg. 2, 4 and 9)
3. On September 4, 2013, the Respondent completed an on-line ACCESS renewal, indicating again, that she was homeless but living at the [REDACTED]. The Respondent again indicated that she was a resident of Wisconsin. The renewal contained a penalty warning advising the Respondent of the consequences of providing false information, including disqualification from the FoodShare program for ten years. The Respondent electronically signed the application, indicating that she understood the penalties for giving false information or breaking the rules. (Exhibit 4, pgs. 2, 4, 9 and 10)
4. The Respondent received FoodShare benefits from September 4, 2014 through February 28, 2014. (Exhibit 3)
5. The Respondent received no benefits in March 2014. (Exhibit 3)
6. On April 9, 2014, the Respondent completed an on-line ACCESS application indicating that she was homeless and listing no address. However, the Respondent did indicate she was a resident of Wisconsin. The application contained a penalty warning advising the Respondent of the consequences of providing false information, including disqualification for ten years. The Respondent electronically signed the application, indicating that she understood the penalties for giving false information or breaking the rules. (Exhibit 6, pgs. 2, 3, 5 and 11)
7. The Respondent received FoodShare benefits from April 9, 2014 through June 30, 2014. (Exhibit 3)
8. The Respondent received no FoodShare benefits between July 1, 2014 and February 28, 2015. (Exhibit 3)
9. On March 1, 2015, the Respondent completed an ACCESS application in which she indicated she was homeless. The Respondent did not list an address and made no claim of being a Wisconsin resident. The application contained a penalty warning advising the Respondent of the consequences of providing false information, including disqualification from the FoodShare program for ten years. The Respondent electronically signed the application, indicating that she understood the penalties for giving false information or breaking the rules. (Exhibit 9, pgs. 2-4, 6, 11 and 12)
10. The Respondent received FoodShare benefits from March 2, 2015 through August 31, 2015. (Exhibit 3)

### **DISCUSSION**

#### *Respondent's Non-appearance*

The Respondent did not appear for this hearing. This circumstance is governed by the regulation in 7 C.F.R. §273.16(e)(4), which states in part:

If the household member or its representative cannot be located or fails to appear at a hearing initiated by the State agency without good cause, the hearing shall be conducted without the

household member being represented. *Even though the household member is not represented, the hearing official is required to carefully consider the evidence and determine if intentional Program violation was committed based on clear and convincing evidence.* If the household member is found to have committed an intentional program violation but a hearing official later determines that the household member or representative had good cause for not appearing, the previous decision shall no longer remain valid and the State agency shall conduct a new hearing. The hearing official who originally ruled on the case may conduct a new hearing. In instances where the good cause for failure to appear is based upon a showing of nonreceipt of the hearing notice, the household member has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. In all other instances, *the household member has 10 days from the date of the scheduled hearing to present reasons indicating a good cause for failure to appear. A hearing official must enter the good cause decision into the record.*

*Emphasis added*

The hearing in this case took place on January 19, 2016. The Respondent was advised of the date and time of the hearing, in an Administrative Disqualification Hearing Notice that was sent to her in [REDACTED] [REDACTED] [REDACTED] indicated that OIG used the Respondent's last known address and that there was no returned mail.

The notice directed the Respondent to contact the ALJ with a phone number where she could be reached. The Respondent did not call in with a number. An attempt was made to reach the Respondent at the phone number listed in the file, xxx-8439. No one answered and the outgoing message was for a person named "[REDACTED]". A voicemail message was left for the Respondent. An attempt was made to reach the Respondent at alternate number, xxx-5108, which was from a 2013 application, but it indicated that the number was no longer in service.

The Respondent did not appear at the hearing and the Respondent did not contact the Division of Hearings and Appeals within 10 days to explain her failure to appear. As such, it is found that the Respondent did not have good cause for her non-appearance.

#### *What is an Intentional Program Violation?*

7 C.F.R. §273.16(c) states that Intentional Program Violations "shall consist of having intentionally: 1) Made a false or misleading statement or misrepresented facts; or 2) Committed an act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any State statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of coupons, authorization card or any other reusable documents used as part of an automated delivery system (access device)."

The Department's written policy restates federal law, below:

#### **3.14.1 IPV Disqualification**

7 CFR 273.16

A person commits an Intentional Program Violation (IPV) when s/he intentionally:

1. makes a false or misleading statement, or misrepresents, conceals or withholds facts; or
2. commits any act that constitutes a violation of the Food Stamp Act, the Food Stamp Program Regulations, or any Wisconsin statute for the purpose of using, presenting, transferring, acquiring, receiving, possessing or trafficking of FoodShare benefits or QUEST cards.

An IPV may be determined by the following means:

1. Federal, state, or local court order,
2. Administrative Disqualification Hearing (ADH) decision,

3. Pre-charge or pretrial diversion agreement initiated by a local district attorney and signed by the FoodShare recipient in accordance with federal requirements, or
4. Waiver of the right to an ADH signed by the FoodShare recipient in accordance with federal requirements.

*FoodShare Wisconsin Handbook*, §3.14.1.

The agency may disqualify only the individual who either has been found to have committed the IPV or has signed a waiver or consent agreement, and not the entire household. If disqualified, an individual will be ineligible to participate in the FS program for one year for the first violation, two years for the second violation, and permanently for the third violation. However, any remaining household members must agree to make restitution within 30 days of the date of mailing a written demand letter, or their monthly allotment will be reduced. 7 C.F.R. §273.16(b).

### *What is OIG's burden of Proof?*

In order for the agency to establish that a FoodShare recipient has committed an IPV, it has the burden to prove two separate elements by clear and convincing evidence. The recipient must have: 1) committed; and 2) intended to commit an intentional program violation per 7 C.F.R. §273.16(e)(6).

"Clear and convincing evidence" is an intermediate standard of proof which is more than the "preponderance of the evidence"(a.k.a. "more likely than not") used in most civil cases and less than the "beyond a reasonable doubt" standard used in criminal cases.

In Kuehn v. Kuehn, 11 Wis.2d 15, 26 (1959), the court held that:

Defined in terms of quantity of proof, reasonable certitude or reasonable certainty in ordinary civil cases may be attained by or be based on a mere or fair preponderance of the evidence. Such certainty need not necessarily exclude the probability that the contrary conclusion may be true. In fraud cases it has been stated the preponderance of the evidence should be clear and satisfactory to indicate or sustain a greater degree of certitude. Such degree of certitude has also been defined as being produced by clear, satisfactory, and convincing evidence. Such evidence, however, need not eliminate a reasonable doubt that the alternative or opposite conclusion may be true. In criminal cases, while not normally stated in terms of preponderance, the necessary certitude is universally stated as being beyond a reasonable doubt.

*Wisconsin Jury Instruction – Civil 205* is also instructive. It provides:

Clear, satisfactory and convincing evidence is evidence which when weighed against that opposed to it clearly has more convincing power. It is evidence which satisfies and convinces you that "yes" should be the answer because of its greater weight and clear convincing power. "Reasonable certainty" means that you are persuaded based upon a rational consideration of the evidence. Absolute certainty is not required, but a guess is not enough to meet the burden of proof. This burden of proof is known as the "middle burden." The evidence required to meet this burden of proof must be more convincing than merely the greater weight of the credible evidence but may be less than beyond a reasonable doubt.

Further, the *McCormick* treatise states that "it has been persuasively suggested that [the clear and convincing evidence standard of proof] could be more simply and intelligibly translated to the jury if they were instructed that they must be persuaded that the truth of the contention is highly probable." 2 *McCormick on Evidence* § 340 (John W. Strong gen. ed., 4<sup>th</sup> ed. 1992).

Thus, in order to find that an IPV was committed, the trier of fact must derive from the evidence, a firm conviction as to the existence of each of the two elements even though there may exist a reasonable doubt that the elements have been shown.

*The Merits of OIG's Case*

In the case at hand, the Office of the Inspector General (OIG) asserts that the Respondent violated the rules of the FoodShare Program by lying about her residence in order to receive food stamp benefits from two states between October 2013 through August 31, 2015.

“A household shall live in the State in which it files an application for participation” in the food stamp program. 7 CFR §273.3(a)

Per 7 C.F.R. §273.16(b)(5), “an individual found to have made a fraudulent statement or representation with respect to the identity or place of residence of the individual in order to receive multiple food stamp benefits simultaneously shall be ineligible to participate in the Program for a period of 10 years.” *See also FoodShare Wisconsin Handbook*, § 3.14.12

With regard to the period of October 2013 through February 2014, OIG has produced no evidence, what so ever, that the Respondent received benefits from a state other than Wisconsin, during that time. Thus, OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent received dual benefits between October 2013 and February 2014.

With regard to March 2014 and April 2014, the only evidence that the Respondent received benefits from another state is the written hearsay statement of [REDACTED], a Program and Project Specialist from [REDACTED] who claimed that the Respondent received benefits, in part, from 3/12/14 to 2/28/15. There is nothing special about her hearsay statements that make them trustworthy or reliable. On the contrary, [REDACTED] attached an EBT transaction report to her letter which shows no transactions prior to May 1, 2015, even though her inquiry was for the period of April 1, 2014 to December 31, 2014. As such, OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent received benefits from [REDACTED] in March 2014 and April 2014.

For the period of May 2014 through August 31, 2015, the documentation from [REDACTED] was inconsistent regarding the months in which the Respondent might have received benefits. The [REDACTED] EBT Transaction Audit Report seems to indicate that the Respondent received benefits from May 1, 2014 through April 2015. (Exhibit 12) However, the FS Benefit History print out only shows benefits received from September 2014 through October 2015. (Exhibit 11, pg. 06/07) The Food Stamp Issuance History shows, yet, a different benefit history, indicating benefits received from September 2014 through September 2015. (Exhibit 11, pg. 07/07) Finally, as indicated above, [REDACTED] claimed that the Respondent received benefits in March and April 2014, in addition to some of the times mentioned above, but none of the printouts from [REDACTED]'s databases shows the receipt of benefits in March or April 2014. These discrepancies undermine the reliability and credibility of documentation from [REDACTED]. In the absence of testimony from [REDACTED] staff to clarify their records and explain these discrepancies, it is found that OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent received benefits from [REDACTED] between May 2014 and August 2015.

Because OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent received dual benefits, a ten-year disqualification penalty cannot be imposed.

The remaining question is whether the Respondent lied about being a Wisconsin resident during the time in question, October 2013 through August 2015.

The Respondent completed a FoodShare application in March 2013, claiming to be a Wisconsin Resident. There is nothing the record showing that she lied in that application for benefits. On the contrary, it is undisputed that the Respondent's EBT card usage was exclusively in Wisconsin until June 4, 2013.

Looking at the Respondent's EBT card usage in Exhibit 5, it appears that the Respondent used her EBT card exclusively in or near [REDACTED] Illinois from June 4, 2013 through April 11, 2014. It is highly unlikely she was living in Wisconsin and doing her grocery shopping that far south in Illinois. Thus, it is reasonable to conclude she was living in Illinois during this time, and that she lied when she completed her September 2013 Wisconsin application for FoodShare benefits, by claiming she was a Wisconsin resident.

The Respondent completed another Wisconsin application on April 9, 2014, in which she claimed to be a Wisconsin resident. So, again based upon the foregoing EBT card usage, she also lied in that application, regarding her state of residence.

It should be noted that the Respondent received Wisconsin benefits from April 2014 through June 2014 and that from April 18, 2014 through June 18, 2014, her EBT usage was largely in [REDACTED]

There is a general rule that a person is presumed to know and intend the probable and natural consequences of his or her own voluntary words or acts. See John F. Jelke Co. v. Beck, 208 Wis. 650 (1932); 31A C.J.S. Evidence §131. Intention is a subjective state of mind to be determined upon all the facts. Lecus v. American Mut. Ins. Co. of Boston, 81 Wis.2d 183 (1977). There is nothing in the record to rebut the presumption that the Respondent intentionally violated the FoodShare rules by lying about her residence in her September 2013 and April 2014 applications for Wisconsin benefits. On the contrary, the Respondent was warned in her March 2013, September 2013, and April 2014 applications about the penalties for providing false information, including disqualification from the FoodShare program, but she lied about her Wisconsin residency anyway.

With regard to any claim after March 1, 2015, OIG cannot meet its burden of proof, because nowhere in the March 1, 2015 application did the Respondent claim to be a Wisconsin resident and there is nothing in the Case Comments in Exhibit 7, showing that the Respondent claimed to be a Wisconsin resident, when she applied in March 2015.

### **CONCLUSIONS OF LAW**

1. OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent received dual benefits. Consequently, a ten year sanction may not be imposed in this case.
2. OIG has met its burden to prove, by clear and convincing evidence, that the Respondent committed an intentional program violation by lying about her residency in her September 2013 and April 2014 application for FoodShare benefits, in order to fraudulently receive FoodShare benefits from October 1, 2013 through February 28, 2014 and from April 9, 2014 through June 30, 2014.
3. This is the Respondent's first IPV.
4. OIG has not met its burden to prove, by clear and convincing evidence, that the Respondent lied about her residency in her March 1, 2015 FoodShare application.

**NOW, THEREFORE, it is ORDERED**

That the IPV for claim number [REDACTED] is sustained only with regard to the claim that the Respondent lied about her residence in her September 2013 and April 2014 applications.

The Respondent is hereby ineligible to participate in the FoodShare program for a period of **one year**, effective the first month following the date of receipt of this decision.

### **REQUEST FOR A REHEARING ON GROUNDS OF GOOD CAUSE FOR FAILURE TO APPEAR**

In instances where the good cause for failure to appear is based upon a showing of non-receipt of the hearing notice, the respondent has 30 days after the date of the written notice of the hearing decision to claim good cause for failure to appear. See 7 C.F.R. sec. 273.16(e)(4). Such a claim should be made in writing to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875.

### **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, WI 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing request (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 18th day of February, 2016

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\sMayumi Ishii  
Administrative Law Judge  
Division of Hearings and Appeals

c: Office of the Inspector General - email  
Public Assistance Collection Unit - email  
Division of Health Care Access and Accountability - email  
[REDACTED] - email



## **State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

Brian Hayes, Administrator  
Suite 201  
5005 University Avenue  
Madison, WI 53705-5400

Telephone: (608) 266-3096  
FAX: (608) 264-9885  
email: [DHAmail@wisconsin.gov](mailto:DHAmail@wisconsin.gov)  
Internet: <http://dha.state.wi.us>

The preceding decision was sent to the following parties on February 18, 2016.

Office of the Inspector General  
Public Assistance Collection Unit  
Division of Health Care Access and Accountability

